

Auditor's Description of Condition
DSHS Response
Laws & Regulations

The Department of Health and the Department of Social and Health Services, Medical Assistance Administration, are not complying with state law or the provisions of the Medicaid State Plan that help to ensure compliance with health and safety standards for hospitals.

Background

In addition to other sources of revenue, hospitals statewide received more than \$600 million in state and federal Medicaid funds in the calendar year 2003 for services provided to Medicaid clients. To be eligible for federal reimbursement, federal regulations require states to ensure that the facilities meet prescribed health and safety standards. To help meet these regulations, the Administration has included in the Medicaid State Plan a provision for surveys of hospital activities. The Department of Social and Health Services, Medical Assistance Administration, relies on the Department of Health to perform these surveys.

In the Plan, the Administration cites the state law that requires the Department of Health to complete these surveys annually. To avoid duplication, the law allows some survey exceptions when certain other professional organizations have performed recent, comparable surveys and reported the results to the Department. Hospitals receiving such surveys must then request exclusion from the state surveys.

In our fiscal year 2003 State Accountability Report, we reported that the Department of Health was not performing annual hospital surveys. Of 109 participating hospitals, only 61, or 56 percent, had received the required survey performed by the Department or by other qualifying professional organizations. We also reported in management letters that:

- The Department of Social and Health Services had not established a written agreement with the Department of Health for survey activities as required by federal regulation.
- The Department of Health did not comply with federal regulations regarding survey documentation.

Description of Condition

We reviewed the above areas during our current audit to determine whether progress had been made in correcting the conditions. We found the Department of Health was still not performing annual hospital surveys as required by state law. Of the state's 102 current hospitals, we found only 50, or 49 percent, were evaluated by the Department or by one

of the other qualifying professional organizations during calendar year 2003. The remaining 52 hospitals were not surveyed at all during this time.

The Administration has drafted an amendment to the State Plan that conforms to the state's current survey activity, increasing the required time period between surveys to a longer but indefinite amount of time. The Administration has not provided us with confirmation that the amendment has been submitted to or approved by the federal grantor.

The Department of Health and the Medical Assistance Administration have recently signed a Memorandum of Understanding for survey activities. However, this document does not meet all federal requirements. For example, it does not specify the types of surveys the Department must conduct or the documentation it must prepare.

Cause of Condition

The Department of Health stated it lacks sufficient staff to survey all hospitals on an annual basis. However, it believes its practices are sufficient for Medicare regulations and therefore are sufficient for Medicaid, even though Medicaid regulations are more specific.

The Department and the Administration also do not believe the Memorandum of Understanding must specify how they will comply with all of the federal regulations.

Effect

The state is making significant payments to hospitals for services to Medicaid clients with little assurance that the services provided are meeting state health standards and regulatory requirements. Costs associated with the hospitals that were not surveyed during 2003 were at least \$206,599,122. Of this, \$103,299,561 was paid with federal funds and the remainder with state funds.

Recommendation

We again recommend the Department of Health comply with state law regarding annual hospital inspections. Alternatively, we recommend the Department request, at the next opportunity, either a change in the law or increased funding to ensure it can meet current requirements.

We recommend the Department of Social and Health Services, Medical Assistance Administration:

- Seek federal approval for an amendment to the State Plan that will allow the Department of Health to perform hospital surveys in conformance with the state's actual survey activity.

- Modify the language of the interagency agreement with the Department of Health to include all provisions required by law.

Department's Response

The Department does not concur with this finding.

SAO originally described this condition to the Department in the 2003 State of Washington Single Audit Management Letter. Since then, the Department has obtained approval from the Center for Medicare & Medicaid Services (CMS) in our State Plan Amendment. The Department is also updating the current Memorandum of Understanding (MOU) with the Department of Health (DOH). Given these actions, we question why the SAO should cite this issue as a finding.

In the 2003 management letter, SAO was provided the following clarifications from the Center for Medicare & Medicaid Services (CMS):

- The State Plan is not representative of “contemporary practice” as it pertains to survey frequency. As written at that time, the State Plan for hospital survey and certification was outdated and needed revision.
- The Medicare contract with DOH is not as rigorous as the Code of Federal Regulations regarding survey documentation requirements. CMS conceded that the SAO uncovered inconsistencies between the federal statute and the current practice delineated in the State Operations Manual. However, exception-based reporting is the “current practice” and the method of reporting approved by the State Operations Manual for Medicare. This manual is applicable to Medicaid as well.
- In general, CMS asserted that the survey practices in Washington regarding survey and certification activities for frequency and documentation for general hospitals are acceptable and that DOH, in fulfilling its responsibility for Medicare certification surveys, was simultaneously fulfilling its responsibility for Medicaid as well.

DSHS has successfully completed revisions to the language in Attachment 4.11-A of the State Plan. This revision was approved by CMS on November 1, 2004, and was effective July 1, 2004. This means the state's survey and certification activities meet the full expectations of the federal funding agency. In addition, the Department is continuing to work with DOH to ensure that the MOU is consistent and compliant with state and federal requirements.

Auditor's Concluding Remarks

Applicable Laws and Regulations

In describing the authority of the Medicaid State Plan, Title 42 of the Code of Federal Regulations, Section 430.10 states:

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

The Department of Social and Health Services acknowledges the authority of the State Plan and announces its commitment to abide by it in section 1.1 of the State Plan:

As a condition for receipt of Federal funds under title XIX of the Social Security Act, the Department of Social and Health Services submits the following State plan for the medical assistance program, and hereby agrees to administer the program in accordance with the provisions of this State plan, the requirements of titles XI and XIX of the Act, and all applicable Federal regulations and other official issuances of the Department.

The State of Washington's Medicaid State Plan, page 42, states:

4.11 Relations with Standard-setting and Survey Agencies

- (a) The State agencies utilized by the Secretary to determine qualifications of institutions and suppliers of services to participate in Medicare is responsible for establishing and maintaining health standards for private or public institutions...that provide services to Medicaid recipients. These agencies are: the Department of Social and Health Services and the Department of Health.
- (b) The State authority (ies) responsible for establishing and maintaining standards, other than those relating to health, for public and private institutions that provide services to Medicaid recipients are: the Legislature, State Board of Health, State Fire Marshall, the Department of Social and Health Services, and the Department of Health.
- (c) Attachment 4.11-A describes the standards specified in paragraphs (a) and (b) above, that are on file and made available to the Center for Medicare and Medicaid Services on request.

Attachment 4.11-A states:

The standards specified in paragraphs (a) and (b) on Page 42 of the Plan are as follows:

A. General Hospitals Revised Code of Washington Chapter 70.41...

Regarding the Department of Health, RCW 70.41.120 states in part:

The department shall make or cause to be made at least yearly an inspection of all hospitals...The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations...

RCW 70.41.122 states in part:

...a hospital accredited by the joint commission on the accreditation of health care organizations or the American osteopathic association is not subject to the annual inspection provided for in RCW 70.41.20 **if**:

- 1) The department determines that the applicable survey standards of the...commission...or the...association are substantially equivalent to its own;
- 2) It has been inspected by the ...commission...or the...association within the previous twelve months; and
- 3) The department receives directly from the...commission...,the...association, or the hospital itself copies of the survey reports...demonstrating that the hospital meets applicable standards.

42 CFR 421.610(f) states in part:

Written agreement required. The plan must provide for a written agreement between the Medicaid agency and the survey agency...covering the activities of the survey agency in carrying out its responsibilities. The agreement must specify that:

- (1) Federal requirements and the forms, methods and procedures that the Administrator designates will be used to determine provider eligibility and certification under Medicaid;
- (2) Inspectors surveying the premises of a provider will
 - (i) Complete inspection reports;

- (ii) Note on completed reports whether or not each requirement for which an inspection is made is satisfied;
- (iii) Document deficiencies in reports

(3) The survey agency will keep on file all information and reports used in determining whether participating facilities meet Federal requirements;

(4) The survey agency will make the information and reports required under paragraph (f) (3) of this section readily accessible to HHS and the Medicaid agency as necessary

- (i) For meeting other requirements under the plan;
- (ii) for purposes consistent with the Medicaid agency's effective administration of the program.